

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

CLEVON DOUGLAS MURRAY,

Petitioner,

v.

CIVIL ACTION NO. 5:16-cv-06099
(Criminal No. 5:11-cr-00213)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

On May 18, 2016, the Petitioner, proceeding *pro se*, filed a Motion for Relief under the Johnson/Welch Cases as to the Armed Career Criminal Act (Document 86, filed in 5:11-cr-00213). On July 7, 2016, the Court entered an *Order and Notice* (Document 87) finding that the Petitioner's filing should be construed as a Motion to Vacate, Set Aside, or Correct Sentence, pursuant to 28 U.S.C. § 2255. Consistent with the Court's *Order and Notice*, the Clerk re-docketed the Petitioner's pleading (Document 86) as a Motion to Vacate, Set Aside, or Correct Sentence, pursuant to 28 U.S.C. § 2255 (Document 88).¹

By *Standing Order* (Document 89) entered on July 7, 2016, this action was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission to this Court of

¹In its *Order and Notice* (Document 87), the Court ordered the Petitioner to notify the Court by August 1, 2016, if he had any objection to the re-characterization of his motion as a § 2255 motion. On July 20, 2016, the Petitioner filed a response (Document 92) advising that he did not oppose the same.

proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On September 17, 2018, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 93) wherein it is recommended that the Petitioner's Motion for Relief under the Johnson/Welch Cases as to the Armed Career Criminal Act (Document 86) be denied, that the Petitioner's Motion to Vacate, Set Aside, or Correct Sentence, pursuant to 28 U.S.C. § 2255 (Document 88) be denied, and that this matter be dismissed from the Court's docket. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by October 4, 2018.²

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Petitioner's Motion for Relief under the Johnson/Welch Cases as to the Armed Career Criminal Act (Document 86) be **DENIED**, that the Petitioner's Motion to Vacate, Set Aside, or Correct Sentence, pursuant to 28 U.S.C. § 2255 (Document 88) be **DENIED**, and that this matter be **DISMISSED** from the Court's docket.

²The docket reflects that the *Proposed Findings and Recommendation* mailed to the Petitioner was returned as undeliverable on October 3, 2018.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Tinsley, counsel of record, and any unrepresented party.

ENTER: October 9, 2018

A handwritten signature in blue ink, reading "Irene C. Berger", is written over a horizontal line.

IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA